

## 46 Am. Jur. 2d Judges § 40

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### Judges

Glenda K. Harnad, J.D.; and Kristina E. Music Biro, J.D., of the staff of the National Legal Research Group, Inc.

### V. Powers and Duties

#### C. Reconsidering Rulings by Another Judge

## § 40. Reconsideration of predecessor judge's rulings on questions of law

[Topic Summary](#) | [Correlation Table](#) | [References](#)

### West's Key Number Digest

West's Key Number Digest, [Judges](#)  24, 32

Generally, a judge may, in a proper case, vacate, modify, or depart from an interlocutory order or ruling of another judge in the same case upon a question of law; the orders that may be affected include an order allowing or denying intervention,<sup>1</sup> a ruling on the admissibility of evidence,<sup>2</sup> or a ruling on the sufficiency or effect of pleadings.<sup>3</sup>

Some jurisdictions follow the view that a question of law that has been taken by one judge in ruling on the pleadings is not to be departed from by another.<sup>4</sup> Although there is authority in support of the view that it is improper for one judge to order stricken from a pleading an allegation that another has ordered or permitted to be added,<sup>5</sup> there is also authority for the view that a trial judge is not required to admit proof of immaterial or irrelevant allegations added to or retained in a pleading under the order of another judge.<sup>6</sup> A question of law that has been ruled upon by one judge on a demurrer or motion attacking pleadings may not be reconsidered by another on a second similar demurrer or motion attacking substantially the same pleadings.<sup>7</sup> The successor judge may also be bound by the decision of the predecessor as to an order allowing intervention<sup>8</sup> and an order granting a jury trial.<sup>9</sup>

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### Footnotes

- 1 [German v. Universal Oil Products Co.](#), 77 F.2d 70 (C.C.A. 8th Cir. 1935); [City of Bridgeport v. Triple 9 of Broad Street, Inc.](#), 87 Conn. App. 735, 867 A.2d 851 (2005).
- 2 [Salem Trust Co. v. Federal Nat. Bank](#), 78 F.2d 407 (C.C.A. 1st Cir. 1935).
- 3 [Schaffran v. Mt. Vernon-Woodberry Mills](#), 70 F.2d 963, 94 A.L.R. 543 (C.C.A. 3d Cir. 1934).

A successor may change a predecessor's rulings of law involving the overruling of demurrers and motions to strike pleadings. *Tube City Min. & Mill. Co. v. Otterson*, 16 Ariz. 305, 146 P. 203 (1914).

A second judge may permit allegations to be added to a pleading notwithstanding the first judge having ordered similar allegations stricken therefrom. *Madden v. Glathart*, 115 Kan. 796, 224 P. 910 (1924).

4 *Henry v. New York Post*, 168 Misc. 247, 5 N.Y.S.2d 716 (Sup 1938), judgment aff'd, 255 A.D. 973, 8 N.Y.S.2d 1022 (1st Dep't 1938), judgment aff'd, 280 N.Y. 842, 21 N.E.2d 887 (1939).

5 *Hardin v. Greene*, 164 N.C. 99, 80 S.E. 413 (1913).

6 *Munro v. Post*, 102 F.2d 686 (C.C.A. 2d Cir. 1939); *Givens v. North Augusta Elec. & Imp. Co.*, 91 S.C. 417, 74 S.E. 1067 (1912).

7 *Galloway v. Mitchell County Elec. Membership Corp.*, 190 Ga. 428, 9 S.E.2d 903 (1940).

8 *Baltimore Trust Co. v. Norton Coal Mining Co.*, 25 F. Supp. 968 (W.D. Ky. 1939).

9 *Second Nat. Bank of Malden v. Leary*, 284 Mass. 321, 187 N.E. 611 (1933).

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